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EXAMINER

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 9

Application Number: 09/255,968

Filing Date: February 23, 1999

Appellant(s): ANDERSON ET AL.

MAILED

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GROUP 3600

Kirk M. Hartung
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 16 September 2002

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-31 do stand or fall together.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,345,315	Cadotte et al.	08-1982
6,102,287	Matyas, Jr.	08-2000
6,065,679	Levie et al.	05-2000
5,893,075	Plainfield et al.	04-1999
5,510,828	Lutterbach et al.	04-1996
5,923,247	Dowden et al.	07-1999
5,926,794	Fethe	07-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 6, 9, 23, 26, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas (US 6,102,287) in view of Cadotte (US 4,345,315).

Claims 1, 23, and 31:

Matyas teaches presenting a question to a customer at the point of transaction (See column 2, lines 42-44), obtaining a response to the question from the customer at the point of transaction (See column 2, lines 45-47), recording the customer's response (See column 29, lines 54-56), and evaluating the response (See column 3, lines 6-9). Matyas does not teach feedback about the employee's performance. Cadotte, however in column 1 lines 30-31, speaks to, "complaints about employee knowledge and service." It would be an obvious

advantage to one of ordinary skill in the art at the time of the invention use the electronic payment device to collect survey information about employees as well as products and services. The suggestion or motivation to combine the use of the customer feedback system with the employee's performance would increase customer feedback and allow for a more timely and accurate measure of customer satisfaction with regard to the efficiency of an employee.

Claim 2:

Matyas discloses the methods described above. Matyas does not teach linking the question and response with the employee who served the customer. Cadotte, however in column 1 lines 6-9 speaks to an, "...electronic terminal for anonymously obtaining data on customer satisfaction with the services rendered by a service organization..." and in lines 31-32, "...complaints about employee knowledge and service." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention use the electronic payment device to collect survey information about employees as well as products and services, and to link together the service with the service provider, such as an employee selling an item. The suggestion or motivation to combine the customer service evaluation system with a linkage between questions and responses about employees would increase customer feedback and allow for a more timely and accurate measure of customer satisfaction regarding an employee's performance.

Claim 3:

Matyas teaches that the question is presented to the customer on the display of an electronic payment device (See column 2, lines 42-44).

Claim 4:

Matyas discloses the methods described in claim 1. Matyas does not expressly disclose that the question is presented on a monitor and the response is entered on a keyboard. Cadotte, however, in column 1, lines 57-58 specifically refers to "terminal and/or keyboard." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to include in any interactive electronic terminal a display device (output) and a keyboard device (input). These are a well-known and widely used input and output devices for effortlessly using an electronic terminal. The suggestion or motivation for combining the use of a keyboard and a monitor with an employee evaluation system would provide a simple and efficient means to utilize a computing device and input customer feedback.

Claims 6 and 26:

Matyas discloses the methods described above. Matyas does not expressly disclose that the question that is presented to the customer is randomly picked from a group of questions. Cadotte, however, in column 56, lines 15-18 specifically refers to "...substituting different permanently recorded inquiries and the responses for the displayed inquiries." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to provide

a plurality of questions that would be displayed, randomly or in a predetermined order, for the consumer to respond to. This is a well-known and widely used technique for conducting a survey and evaluating customer satisfaction with products or services. The suggestion or motivation for combining the employee evaluation system with the technique of using a randomly displayed group of inquiries would provide a means for conducting the survey and enhancing the ability to gather factual data in a simple and efficient manner, and to provide a degree of security and integrity to the process.

Claim 9:

Matyas discloses the methods described above. Matyas does not expressly disclose compiling the responses in a computer. Cadotte, however, in Figure 7 shows a controller consisting of ROM, buffers, registers, and the like. It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to compile the results on a computer. This is a well-known and widely used device for tabulating and evaluating the results of a customer satisfaction survey. The suggestion or motivation for combining the employee evaluation system and the use of a computer would provide a means for conducting the survey and enhancing the ability to gather factual data in a simple and efficient manner.

Claim 29:

Matyas teaches recording the customer's response (See column 29, lines 54-56).

Claims 7, 8, 28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Fethe (US 5,926,794).

Claims 7 and 28:

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose accumulating scores for questions for individual employees over a defined time period. Fethe, however, in Figure 5 does show, "...an individual score profile report generated by the performance appraisal system." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to use the data from the survey to evaluate an employee's performance within a time period. The suggestion or motivation to combine the employee evaluation system and the practice of a rime-based evaluation scheme is a well-known and widely used technique that enables an employer to improve the performance of his workers and to track their progress.

Claim 8:

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose accumulating scores for questions for different measurement levels over a defined time period. Fethe, however, in Figure 5 does show, "...an individual score profile report generated by the performance appraisal system." It would be obvious advantages to one of ordinary skill in the art at the time of the invention to combine the scores of a time period to further evaluate the change in an employee's performance. The suggestion or

motivation for combining the employee evaluation system and the technique of measuring the various competency levels of an employee over a period of time is a well-known and widely used technique that enables an employer to track the performance of his workers and gauge their performance against others as well as compositely with other stores, restaurants, etc.

Claim 30:

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose tying employee compensations to survey responses. Fethe, however, in column 2, lines 41-55 does disclose an employee appraisal system and management of employee rewards. It would be obvious advantages to one of ordinary skill in the art at the time of the invention to combine the responses from customer surveys with a bonus payment or other similar compensation. By basing an employee's salary or bonus on his customer service performance, each employee is encouraged to provide the best possible service to all customers, thereby improving sales and throughput.

Claims 10 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Dowden (US 5,923,247).

Claims 10 and 24:

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not disclose expressly communicating an alert signal when a customer service response falls below a threshold. Dowden, however, in

column 10, lines 13-17 does state, "...the alarm indicator activated if the duration of an unavailability condition exceeds a predetermined value is the same one as that activated if the number of occurrences of an unavailability condition in an analysis period exceeds the threshold value." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to use a threshold value to trigger and alarm, with respect to either a rising or falling state. The suggestion or motivation for combining the employee evaluation system and applying a threshold value to customer service responses would allow performance to be monitored and action taken quickly before replies trail off. By monitoring an alarm state as indicated by the survey machine, action may be taken to increase customer response and thereby maintain the usefulness of the survey system.

Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Plainfield (US 5,893,075).

Claims 11 and 25:

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose offering the customer a reward as an incentive to answer the question. Plainfield, however, in column 1, line 67 to column 2, line 4 does state, "To stimulate customers to enter data, the system may include means for inducing customers to enter data about themselves into a customer database, such as generating a message on the computer display screen

offering an incentive to the customer for entering such data." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to offer an incentive to respond to a survey question. The suggestion or motivation for combining the employee evaluation system with offering a reward to participate in a survey is a well-known and widely used practice for increasing the participation by customers or clients who wouldn't ordinarily take the time to contribute.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Levie et al., (US 6,065,679).

Claim 27:

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose that the customer and the employee are physically present at the store at the time of the transaction. Levie, however, in column 2, line 14 discloses a POS terminal, and in column 51, line 58 discloses using the terminal as a customer survey device, inherently disclosing that the customer is at the store at least during the transaction and at the time of the transaction, and that the involved employee, who inherently works at the store, was present during the process leading up to the transaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to be able to use the device while the customer and the employee are in the store conducting the transaction. Inherently, this is where the majority of transactions will occur,

and the system should be operable to accept payments and conduct the routine survey "in-house."

(11) Response to Argument

Examiner's Note: Applicant has switched the first and second issues (**A** and **B** below) of paragraph 6 with the arguments in paragraph 8 of the Appeal Brief. The arguments of paragraph 8A seem to relate to issue 6B, and the arguments of paragraph 8B appear to relate to issue 6A. For simplicity and ease of interpretation, the Examiner has chosen to respond to the two issues together and separately, and has addressed each argument categorically below.

First Issue

A. Are independent claims 1, 23, and 31 obvious under 35 U.S.C. § 103(a) over Matyas 6,102,287 in view of Cadotte 4,345,315?

In column 1, lines 10-12 (background of the invention), Matyas states, "The invention finds particular use in applications and services involving shopping and purchase of goods and services requiring payments of money." Matyas also discloses related art in column 1, lines 32-53 where he discusses secure electronic transactions (SET) protocols, which are used in the credit card infrastructure to make credit purchases at a store. These kinds of transactions are commonly called "Point of Sale" (POS) or "Point of Transaction" (POT). POS transactions can be conducted at a gas station, in a supermarket, in a restaurant, hotel, etc. A consumer only has to "swipe" their credit card to authorize the

transaction. The box that the credit card is swiped through is normally connected by a modem to a clearinghouse through a common copper telephone line via the local telephone company. These types of transactions are old and well-known in the commerce arts. Matyas improves on these techniques by offering this same type of payment technique on a computer connected to the Internet, using Internet browsing software (Internet Explorer, Netscape Navigator, etc). Matyas states, "One object of the present invention is to provide an **electronic payment system** that allows buyers to received product survey results (emphasis added). Another object of the present invention is to provide a means within an electronic payment system to conveniently display product survey results by using a client browser. Another object of the present invention is to provide an electronic payment system that allows buyers to **take surveys** for products they have purchased" (emphasis added)(column 2, lines 35-44). It is the position of the Examiner that a purchase made over the Internet from a home computer is equivalent to a point of transaction and a point of sale made from any retail establishment. To use the phraseology of the claim language, Examiner believes that the transactions and the survey conducted by the Matyas invention are completed "at a point of transaction and at a time of transaction."

Cadotte discloses a Customer Satisfaction Terminal. In column 1, lines 5-9, he states, "This invention relates to an electronic terminal for anonymously obtaining data on customer satisfaction with the services rendered by a service organization, by means of a portable, electronic data collection terminal."

Cadotte goes on to summarize his invention as "...an improved and relatively inexpensive method and apparatus for anonymously collecting opinion data such as customer satisfaction opinions for the services rendered by a service organization such as a motel, hotel, supermarket, drug store, or similar organization" (column 2, lines 25-30). In column 55, lines 40-64, Cadotte explains that the Customer Service Terminal is portable and can be positioned at the check-out counter of a motel, or in the restaurant, indicating that the customer can enter survey opinions immediately after receiving the product (food) or service (from the main desk). This feature would motivate one of ordinary skill in the art to place the device at a convenient point of sale or transaction at the time of the transaction or immediately after. Cadotte also discloses, "The conventional, portable, data collection terminal includes means for converting the stored key scan signals to acoustic pulses for transmission over the conventional telephone lines to allow the collection opinion data to be transmitted to a remote large scale data processing unit" (column 3, lines 55-60). Updated to today's standards, this is equivalent to connecting the unit to the Internet to transmit survey information to a compilation area, such as is accomplished by Matyas.

The Applicant believes that the Examiner has misconstrued the Matyas invention. Examiner disagrees and points to the summary above. Matyas teaches a transaction device (personal computer), a point of transaction (buying a product or service via the Internet), and submitting survey results through the

same computer and Internet connection. Although Matyas does not specifically state that this survey is about a store employee or the level and type of service that the store provides, Cadotte discloses a system that collects survey regarding customer satisfaction at a point of sale and transmits the information to a central location. The transaction system of Matyas modified by the analogous technique of Cadotte discloses the claimed invention. That is, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Matyas with Cadotte, and likewise, to improve Cadotte with Matyas.

With regard to the Applicants assertions of A above, the Examiner feels that the combination of Matyas and Cadotte is therefore proper.

Second Issue

B. Does Matyas 6,102,287 disclose, teach or otherwise suggest the presentation of questions to a customer at the point of sale and obtaining responses of questions at the point of transaction?

The Applicant believes that the Examiner has misconstrued the Matyas invention. Examiner disagrees and points to the summary above. Matyas teaches a transaction device (personal computer), a point of transaction (buying a product or service via the Internet), and submitting survey results through the same computer and Internet connection. It is the position of the Examiner that a purchase made over the Internet from a home computer is equivalent to a point of transaction and a point of sale made from any retail establishment. To use the

phraseology of the claim language, Examiner believes that the transactions and the survey conducted by the Matyas invention are completed "at a point of transaction and at a time of transaction."

The Applicant also states, "Thus, it is impossible for the purchaser to evaluate the product or services, until the product and services are received. Since this is an Internet transaction, the product or service is not obtained at the time of the purchase, but necessarily comes after the point of sale when the product is shipped or the services performed". The Examiner disagrees. There are many items, such as documents, songs, pictures, etc, that can be viewed immediately after purchase on the Internet. Survey questions can be responded to either before receiving the digital product, or after. Questions can relate to the quality of the product or to the efficiency of the process. Deciding what and when to ask is merely a choice in the design of the system. Completing the survey "at a later time" as claimed by the Applicant is a subjective interpretation of the lag between reception of the product or service and completion of the survey. As just shown, choosing to conduct the survey just after a meal, or just before listening to the song is well within the capability of the Matyas invention.

With regard to the Applicant's assertions of **B** above, the Examiner feels that he has correctly interpreted Matyas, and that Matyas does disclose presenting questions at the point of transaction and receiving responses from the customer at the point of transaction.

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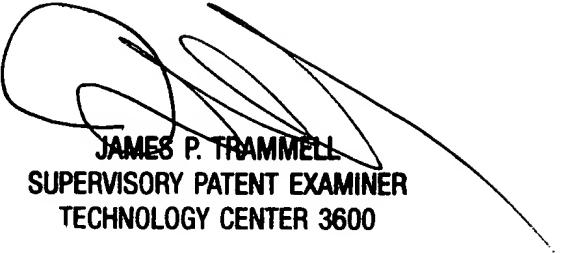
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner
Art Unit 3621
November 15, 2002

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